

Privacy and the Civil Commitment Process

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Recommendation

- Virginia Health Records Privacy Act and Va. Code 37.2-814 et seq., should be amended to ensure that all entities involved with treatment have full authority to share records with each other and all persons involved in the involuntary commitment process while providing the legal safeguards needed to prevent unwarranted breaches of confidentiality.
 - Report of the Virginia Tech Review Panel, Recommendation IV-22

New Privacy Provision

§§ 16.1-337; 19.2-169.6; 32.1-127.1:03(D)(13); 37.2-804.2

- Any provider who has provided or is providing services to a person who is the subject of a commitment proceeding shall, upon request, disclose to:
 - Magistrate
 - Court
 - Person's attorney
 - Person's GAL
 - Independent examiner
 - CSB
 - Law enforcement officerany information that is necessary and appropriate for the performance of his duties

New Privacy Provision

§§ 16.1-337; 19.2-169.6; 32.1-127.1:03(D)(13); 37.2-804.2

- Any provider who has or is providing services to a person who is the subject of a commitment proceeding shall disclose information that may be necessary for the treatment of such person to any other provider evaluating, providing services, or monitoring treatment of the person

New Privacy Provision

§§ 16.1-337; 19.2-169.6; 32.1-127.1:03(D)(13); 37.2-804.2

- Law enforcement added requirements
 - Information disclosed to LE shall be limited to that necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person
 - Information disclosed to LE shall not be used for any other purpose, disclosed to others, or retained

New Privacy Provision

§§ 16.1-337; 19.2-169.6; 32.1-127.1:03(D)(13); 37.2-804.2

- Immunity provision
 - Any provider disclosing information pursuant to the new provision shall be immune from liability for any harm resulting from the disclosure unless
 - Intended the harm
 - Acted in bad faith

New Requirements for ECOs, TDOs, and Orders

- Any ECO, TDO or court order issued for a minor, adult or jail transfer shall provide for the disclosure of records pursuant to the new disclosure provision
 - §§ 16.1-337(C); 19.2-169.6(E); 37.2-808(A); 37.2-809(B); 37.2-817(K)

New Disclosure Provision and HIPAA

- Disclosures made pursuant to the new disclosure provision are permissible under HIPAA as disclosures
 - Required by law (45 C.F.R. § 164.512(a))
 - Pursuant to a court order (45 C.F.R. 164.512(e))

New Disclosure Provision and the Federal Substance Abuse Regulations

- The federal Substance Abuse Regulations (42 C.F.R. Part 2) do not contain the same exceptions as HIPAA but...
 - If a provider is subject to 42 C.F.R. Part 2, only information that would identify a person as a substance abuser is precluded from disclosure and

New Disclosure Provision and the Federal Substance Abuse Regulations

- 42 C.F.R. § 2.51
 - Information identifying person as a substance abuser may be disclosed to medical personnel who have need for information about the patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires medical intervention

SB 336

- For purposes of § 37.2-809 (TDO), a health care provider or CSB shall not be required to encrypt any email containing medical records or information sent to a magistrate unless there is reason to believe that a third party will attempt to intercept.

Specific Privacy Provisions Related to MOT

- The MOT order shall require the CSB to monitor the implementation of the MOT plan and report any material noncompliance to the court. § 37.2-817(F)

Specific Privacy Provisions Related to MOT

- Monitoring compliance shall include
 - Contacting service providers to determine if the person is complying
 - Notifying the court of the person's material noncompliance
- Providers of services identified in the plan shall report any material noncompliance to the CSB
- § 37.2-817.1(A)

Court Records

§ 37.2-818(A)

- Tape recording of hearing filed with clerk in confidential file
- Only one hearing shall be recorded per tape (SB 142)
- Person is entitled to a copy of the tape upon request

Court Records

§ 37.2-818(B)

- Recordings, medical records, reports and court documents pertaining to the hearing shall be kept confidential by the court
 - Access to the dispositional order only may be obtained by filing a motion stating why access is needed
 - Court may grant disclosure of dispositional order if it finds that disclosure is in the best interest of the person who is the subject of the hearing or of the public

Court Records

§ 37.2-818(B)

- Person may waive confidentiality in writing
- Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request

Court Records

§ 37.2-818(C)

- After entering an order for involuntary admission or MOT, the court shall order that copies of relevant records be released to
 - Facility in which person is placed
 - CSB where person resides
 - Any treatment providers identified in MOT plan
 - Any other treatment providers or entities